

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8658 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

G E B

Versus

NARSINHBHAI KOHDABHAI CARPENTER

Appearance:

MR MD PANDYA for Petitioners
MR SURESH M SHAH for Respondent No. 1
MR MV CHOKSHY for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 03/11/98

ORAL JUDGEMENT

This Special Civil Application under Article 226 of the Constitution of India is preferred by the Gujarat Electricity Board and the Superintending Engineer, Rajkot challenging the order dated 1.8.1992 passed by the Labour Court, Rajkot in Recovery Application No.1777/86 filed by the first respondent under the provisions of section 33-C (2) of the Industrial Disputes Act, 1947 (for short, 'the

Act') and also the order dated 20.7.1995 passed by the Presiding Officer, Rajkot, rejecting the Misc.Application No.35/92 seeking review of the aforesaid order dated 1.8.1992.

2. The necessary facts are that the respondent No.1-Narsinhbhai Khodabhai Carpenter filed an application under Section 33-C (2) of the Act, stating inter-alia, that he joined the services of the Government of Saurashtra on 11.4.1950 as an Overseer in the Industries and Commerce Department. Upon establishment by the Saurashtra Government, Saurashtra Electricity Board in the year 1954, all the employees working in the Electricity Department of the Saurashtra Government came to be transferred to the said Board. The services of the first respondent also came to be transferred to the Saurashtra Electricity Board. In the year 1956, he was promoted as Head Draftsman in the pay scale of Rs.180-10-220-EB-15-280. After the formation of the bilingual State of Bombay, the Bombay State Electricity Board came to be established on 31.1.1957. Employees of the Saurashtra Electricity Board, Bombay Electricity Board, M.P. Electricity Board and all the Electricity Departments of the Kutch and Marathawada were absorbed in the Bombay State Electricity Board. At the time of such absorption, as per the directives as contained in letter dated 7.3.1957 of the Bombay Government, he was required to communicate in writing his option. Further the say of the respondent No.1 is that a statement indicating the proposed grade for the new Board for Bombay vis-a-vis grades as prevailing under the Bombay Electricity Board, Saurashtra Electricity Board and M.P. Electricity Board was appended to the letter dated 7.3.1957. He opted for new grades in the Bombay Electricity Board. As he was serving as Head Draftsman with the Saurashtra Electricity Board in the pay scale of Rs.180-10-220-EB-15-280 as per the statement appended to the letter dated 7.3.1957, the nomenclature of the post of Head Draftsman was changed to that of the post of Chief Draftsman with the result that as per the above referred statement, he became entitled to the pay scale of Rs.225-25-425. However, he was denied the same illegally. He claimed the pay scale of Rs.225-25-425 w.e.f. 1.4.1957 and higher pay scale revised from time to time and all consequential benefits in the matter of increments, pay difference, promotion etc. accrued till the date of his retirement on attaining the age of superannuation i.e. 1.9.1973.

During the course of the proceedings, an application Exh.15 dated 9.1.1990 was filed seeking direction to implead the Bombay State Electricity Board

(at present Maharashtra State Electricity Board) as opponent No.2 to the proceedings. Notice was given to the Maharashtra State Electricity Board (for short, 'the MSE Board'), but none appeared on their behalf. Thus, the application to implead MSE Board was granted by order dated 6.3.1990. The Labour Court, by the impugned order dated 1.8.92 held that the Gujarat Electricity Board (for short 'the GEB') as well as the MSE Board are jointly and severally liable to pay the first respondent the pay difference and consequential differences arising from for the period 1.4.1957 to 31.8.1973 which are due and payable to him. The petitioner filed Review Application and the same was also rejected by order dated 20.7.1995.

3. It is contended by Mr M D Pandya, learned Sr.Advocate appearing for the petitioners that the Labour Court has no jurisdiction in recovery proceedings which are in the nature of execution proceedings to adjudicate a claim that the proceedings involving the adjudication of the legality and validity of the order denying the pay scale. In support of the contention, he has placed reliance on a decision of the Apex Court, in the case of Central Bank of India v P S Rajagopalan, reported in AIR 1964 SC 743, and a decision in the case of C.I.W.T. Corporation v. Workmen, reported in AIR 1974 SC 1604. It is also contended by the learned Advocate that the Labour Court committed error in rejecting the review application on the ground that the Court has no jurisdiction. In support of the contention that review application was maintainable, the learned Advocate has placed reliance on an unreported decision of this Court rendered in Special Civil Application No.191/79 dated 8.11.1979 and also an unreported decision reported in (1993) 1 GLR 83 and 1995 (1) GLR 635. The pay of the respondent No.1 was fixed by the Gujarat Electricity Board on the basis of the pay and grade of the first respondent with the Bombay State Electricity Board. The entire record of 1957-1958 was with the Bombay State Electricity Board, as such the GEB is not liable to pay the claim. The learned Advocate submitted that the Labour Court has overlooked the statement of the claimant respondent wherein he himself has said that his claim is against the MSE Board.

4. I would first like to deal with the last contention. The learned Advocate has invited my attention to the statement of respondent No.1 Narsinhbhai Khodabhai Carpenter at Exh.20 recorded on 4.1.1990, the english translation of his statement is extracted as follows:

"My claim of the present application is only against the second opponent. I am not claiming and I am not going to make any claim in respect of pay, arrears, pension, gratuity etc. from the first respondent. My claim as per the application is against the second opponent."

5. At this stage, Mr S M Shah, learned Advocate appearing for the first respondent submits that a statement was made with respect to the second opponent i.e. the Superintending Engineer, GEB. Mr Pandya, learned Advocate for the petitioners has promptly invited my attention to the application Exh.34 and submitted that in the claim, the first respondent was GEB and the second opponent was Superintending Engineer of GEB and the third opponent was MSE Board. However, inadvertently, the deponent referred to the second opponent though he actually meant MSE Board. Thus, the application Exh.34 dated 6.6.92 was filed for correction in the statement. The english translation of the said application is reproduced as follows:

"Advocate for first and second opponents respectfully submit that in the present proceedings evidence of the applicant has been recorded. In his oral evidence the applicant has stated that he has no claim/dues against the first opponent but has a claim against the second opponent. As the first and the second opponent form part of a single organization there can be no claim for personal recovery from the second opponent but as the second opponent is the officer of the first opponent in substance, the say of the applicant is that he has claim/dues against the third opponent, against whom the matter is proceeding ex-parte, namely the Maharashtra Electricity Board, Bombay. Therefore in this proceeding cross-examination by the first opponent includes that on behalf of the second opponent. As through inadvertence, the third opponent has been considered as the second opponent in the proceedings, on behalf of the first and second opponent it is respectfully requested that in the deposition wherever reference has been made of second opponent the same should be considered as of third opponent, Maharashtra Electricity Board. If the applicant is not agreeable to this then permission be granted to cross-examine him on behalf of second opponent. Evidence on our side will have to be considered as that on behalf of first and second

opponent.

Rajkot Sd/-
6.6.92 Advocate for opponent No. 1 & 2"

In view of the aforesaid, it is clear that the first respondent made the statement that his claim for payment of arrears, pension and gratuity was only the amount from the MSE Board. This fact further finds confirmation from the written arguments submitted by the respondent, the english translation of which reads as follows:

"8. Further I do not want any relief against the first opponent. The second opponent has not entered appearance before the court nor has challenged our assertions nor tendered any evidence, therefore, in our understanding there is no reason for the Court not to pass order against the said opponent.

11. The court has jurisdiction to conduct the matter. The second opponent against whom I have a claim has not at all presented before the Hon'ble Court as such the said opponent has no defence."

It may be stated that MSE Board did not put in appearance before the Labour Court. In the present Special Civil Application also the MSE Board is respondent No.2 but in spite of service, it has chosen not to defend. Thus, it is apparent that the Labour Court has committed error in granting relief to the petitioner against the GEB, which he himself has not claimed. Otherwise also there can be no claim against the GEB as during the disputed period, he was in the employment of MSE Board. In view of this, it is not necessary to deal with the other contentions raised by Mr M D Pandya.

6. Consequently, this Special Civil Application is partly allowed and the order of the Labour court, Rajkot dated 20.7.1995 passed in Misc.Application No.35/92 is quashed and set aside. The order dated 1.8.1992 passed in Recovery Application No.1777/86, so far as it relates to holding the petitioner-Gujarat Electricity Board jointly and severally liable to pay the respondent No.1 the pay difference and the consequential benefits is concerned, the same is quashed and set aside. Thus, the issuing of certificate under section 33 (i)(2) shall confine only against the Maharashtra State Electricity Board. At this stage, Mr S M Shah, learned Advocate

submits that the MSE Board has not challenged the award and they have also not complied with the same. In view of this, it is directed the Maharashtra State Electricity Board will comply with the award dated 1.8.1992 within a period of two months from the date of production of the certified copy of this order before the appropriate authority.

Rule made absolute to the aforesaid extent.

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msp